

Exhibit 3

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Democracy Dies in Darkness

Barr says he hasn't seen fraud that could affect the election outcome

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Attorney General William P. Barr said Tuesday that he has “not seen fraud on a scale that could have effected a different outcome in the election,” undercutting claims that President Trump and his allies have made — without evidence — of widespread and significant voting irregularities.

His comments to the Associated Press, while caveated, make Barr the highest-ranking Trump administration official to break with the president on his allegation that the election was stolen, and they might offer political cover to other Republicans to stake out similar positions.

Trump himself, though, has shown no sign of backing down, and some of his Capitol Hill allies were critical of Barr’s assertions. Trump’s relationship with his attorney general was already deteriorating, with the president frustrated that Barr was unwilling to launch aggressive measures to support his fraud claims or take other steps that might benefit his reelection campaign.

At the same time Barr’s comments became public Tuesday, the Justice Department revealed that the attorney general had, in October, secretly appointed U.S. Attorney John Durham of Connecticut as special counsel examining how the FBI investigated the Trump campaign in 2016 and beyond — a move that might hearten Trump and his allies.

Barr assigned Durham to run the investigation last year, but the order to install him as special counsel is likely to ensure that his work is not shut down by the incoming administration of Joe Biden, a concern voiced by people close to Barr.

Under Justice Department regulations, special counsels can be dismissed only for misconduct or some other good cause, making it more difficult for the next attorney general to end Durham’s investigation, in addition to the political cost that would come with short-circuiting the probe.

Barr has been accused of using his position as the country’s top law enforcement official to help Trump win reelection and amplify his unfounded claims of electoral malfeasance.

Before the election, he warned repeatedly and forcefully about possible fraud in mass mail-in voting, echoing the president’s attacks on the practice. Afterward, he reversed long-standing Justice Department policy and authorized prosecutors to take overt steps to pursue allegations of “vote tabulation irregularities” in certain cases before results were certified. To date, none have done so.

Barr’s memo, though, authorized actions only in cases that could change the outcome of the election, and officials have previously told The Washington Post that they were aware of no such investigations or evidence that would warrant

Since it became clear that Biden won, Trump and his allies have sought to discredit the election's results, mounting unsuccessful court challenges and publicly decrying what they claim to be fraud and other irregularities. But even with Barr's directive in place, the attorney general met Trump and his allies' claims with silence. A group of 16 assistant U.S. attorneys even wrote to Barr to say they had not seen evidence of any substantial anomalies.

A person who spoke with Trump on Monday said he was railing against governors in Republican states — particularly in Georgia and Arizona — who would not back up his claims of fraud and were proceeding to certify election results. Barr's comments take away another valuable ally in his cause, which is expected to go nowhere, but Trump nevertheless is unlikely to give it up until at least after the electoral college votes Dec. 14, this person said.

An administration official, like others speaking on the condition of anonymity to detail a sensitive topic, told The Post that in recent months, Barr and Trump have "barely spoken," though they did have a conversation the week before Thanksgiving.

Before the election, the president was frustrated that Durham was not producing public results that might discredit his political opponents and aid his reelection bid. Then, Trump became upset that the Justice Department was not doing more to support his claims of massive fraud, nor coming out publicly to support his claims, officials said.

Trump has made his displeasure known. In October, after it was reported that Durham would not release a report before the election, the president said that the delay was "a disgrace" and that he would relay his thoughts directly to Barr.

"If that's the case, I'm very disappointed," Trump said during an interview with radio host Rush Limbaugh. "I think it's a terrible thing. And I'll say it to his face."

This past weekend, Trump took aim at the Justice Department and the FBI over their failure to back his election fraud claims.

"Where are they? I've not seen anything," he told Fox News. The president also suggested that the bureau and the Justice Department were possibly "involved," though he did not offer any evidence or further clarity.

Administration officials said those public disputes have also played out in private. Trump has complained to advisers about his attorney general, two officials said, and the frustration has filtered to Barr even as the men have talked less frequently.

The president has also been annoyed that Barr has expressed support for FBI Director Christopher A. Wray, whose public statements contradicting Trump — about election security and domestic extremism — have made him a frequent target of the president's rage, an administration official said.

"There have been clashes," the official said.

In the Associated Press interview, Barr said the FBI and the Justice Department had looked into some fraud claims, and suggested they had not found what the president and his allies have asserted. Barr seemed to take particular aim at one claim by lawyer Sidney Powell, who alleged a grand conspiracy in which election software changed votes.

"There's been one assertion that would be systemic fraud, and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we

Barr did not rule out any instances of fraud or election irregularities. He said that most of the claims of fraud that had come to the department were "very particularized to a particular set of circumstances or actors or conduct. They are not systemic allegations. And those have been run down; they are being run down."

"Some have been broad and potentially cover a few thousand votes," he said. "They have been followed up on."

After the interview was published, a Justice Department spokesperson issued a statement attacking some of the reporting on it and declaring, "The Department will continue to receive and vigorously pursue all specific and credible allegations of fraud as expeditiously as possible."

In a statement, Rudolph W. Giuliani, Trump's personal attorney, and Jenna Ellis, a legal adviser to the campaign, said, "With all due respect to the Attorney General, there hasn't been any semblance of a Department of Justice investigation." The two lawyers have been leading Trump's effort to attack the results of the election, and though they have appeared with Powell, they have said publicly that she is not formally working for Trump. Powell did not return an email seeking comment.

In recent weeks, officials said, Trump has been speaking with Giuliani and Ellis extensively, believing that his other advisers are too skeptical about his claims or too pessimistic about his chances.

"Nonetheless, we will continue our pursuit of the truth through the judicial system and state legislatures, and continue toward the Constitution's mandate and ensuring that every legal vote is counted and every illegal vote is not," their statement said. "Again, with the greatest respect to the Attorney General, his opinion appears to be without any knowledge or investigation of the substantial irregularities and evidence of systemic fraud."

Some Republicans similarly took aim at the Justice Department after Barr's comments. Rep. Matt Gaetz (Fla.) said on Fox Business that the department "has a lot of egg on their face having not discovered a lot of the fraud as it was occurring." Sen. Ron Johnson (Wis.) called on Barr to show more of what investigators had discovered.

"I think there is still enough questions outstanding," Johnson said, according to CNN.

Even as news broke of Barr's statements to the Associated Press, Trump was tweeting about "hundreds of thousands of fraudulent (FAKE) ballots" and a news conference advancing similar claims. Barr was spotted at the White House, though an official said that was for a meeting with Chief of Staff Mark Meadows, not the president.

In the interview with the Associated Press, Barr endeavored to make clear that whatever disputes Trump might have with the election, the Justice Department is not the appropriate institution to resolve them. The department, he said, examines crimes, while state or local officials audit voting results.

"There's a growing tendency to use the criminal justice system as sort of a default fix-all, and people don't like something, they want the Department of Justice to come in and 'investigate,'" Barr said.

Senate Minority Leader Charles E. Schumer (D-N.Y.) surmised that Barr's comments would probably result in the attorney general being terminated.

"I guess he's the next one to be fired, since he now too says there's no fraud," Schumer said. "Trump seems to fire anyone in that regard."

Christopher Krebs, who had led the Department of Homeland Security's Cybersecurity and Infrastructure Security

Agency case of the key federal lawyer charged with safeguarding the vote was filed just hours after the public defended the integrity of the election count. Shortly before his dismissal, Krebs refuted allegations made by the president's supporters that election systems had been manipulated, tweeting that "59 election security experts all agree, 'in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent.'

Durham's appointment as special counsel, meanwhile, drew a more predictable reaction, as it was embraced by Republicans and decried by Democrats.

Sen. Lindsey O. Graham (R-S.C.), chairman of the Senate Judiciary Committee, said he hoped that Democrats would show "the same respect" they gave to former special counsel Robert S. Mueller III when he led the Russia inquiry. "This important investigation must be allowed to proceed free from political interference," said Graham. "The American people deserve a full accounting of this wrongdoing."

Rep. Adam B. Schiff (D-Calif.), chairman of the House Intelligence Committee, said that the Durham appointment smacked of politics and that the attorney general "is using the special counsel law for a purpose it was not intended: to continue a politically motivated investigation long after Barr leaves office."

The attorney general's order, signed Oct. 19 but kept secret until now, said that after consulting with Durham, Barr had "determined that, in light of extraordinary circumstances relating to these matters, the public interest warrants Mr. Durham continuing this investigation pursuant to the powers and independence afforded by the Special Counsel regulations."

A Justice Department official said the White House was not made aware of the appointment at the time and learned only Tuesday.

As special counsel, Durham is authorized to investigate "whether any federal official, employee, or any other person or entity violated the law in connection with the intelligence, counter-intelligence, or law-enforcement activities directed at the 2016 presidential campaigns, individuals associated with those campaigns, and individuals associated with the administration of President Donald J. Trump, including but not limited to Crossfire Hurricane and the investigation of Special Counsel Robert S. Mueller III."

Crossfire Hurricane is the name FBI agents gave to their investigation of Trump campaign associates whom they suspected might be involved with Russian election interference. Mueller took over that probe after Trump fired Wray's predecessor, James B. Comey.

In a letter to lawmakers Tuesday explaining his decision, Barr said that although he had expected Durham to finish his work by the summer, delays created by the coronavirus pandemic and the discovery of additional information pushed back that timeline.

"In advance of the presidential election, I decided to appoint Mr. Durham as a Special Counsel to provide him and his team with the assurance that they could complete their work, without regard to the outcome of the election," Barr wrote.

The letter states that Barr waited to make that decision public until after the election, though it does not indicate why he waited until December to do so. Some lawyers questioned whether he had misused Justice Department regulations to appoint a department employee — Durham — as special counsel, when the regulation states that a special counsel

Barr’s order appointing Durham seems to try to circumvent that requirement by citing another department regulation stating that the attorney general can appoint a Justice Department officer to “conduct any kind of legal proceeding.”

The incoming Biden administration could, in theory, rewrite the special counsel regulation to make it easier to dismiss Durham or otherwise change his mandate, but that would probably provoke anger among Republicans.

“What Barr thinks he’s doing is ensuring Durham’s work can continue beyond the end of this administration, because the regulations don’t allow the attorney general to fire the special counsel except for cause,” said Gregory A. Brower, a former senior FBI official. “The next administration may be stuck with Durham, but as long as Durham is playing it straight, that’s not a terrible thing. Arguably the new administration doesn’t have a dog in this fight.”

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